

THE HONORABLE RONALD B. LEIGHTON



07-CV-05089-CNST

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CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA	
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
at TACOMA

**GIFFORD PINCHOT TASK FORCE, a  
non-profit corporation, ,**

**Plaintiff,**

**v.**

**MARBLE CREEK, LLC, a Washington  
limited liability corporation; DAVE  
CREAGAN, an individual; JERRY SAUER,  
an individual; and BRAD THOMAS, an  
individual, ,**

**Defendants.**

Case No. 07-5089 (RBL)

**CONSENT DECREE**

WHEREAS on December 6, 2006, Plaintiff Gifford Pinchot Task Force ("GPTF") provided Defendants Dave Creagan, Brad Thomas, Jerry Sauer, and Marble Creek, LLC with notice of GPTF's intent to file suit (the "Notice Letter") pursuant to the Clean Water Act, 33 U.S.C. § 1365(b), regarding ongoing construction and development activities located in the Swift Reservoir area at the real property described in Exhibit A (the "Properties") and owned by Defendants Creagan, Thomas and Sauer (the "Individual Defendants").

WHEREAS, GPTF filed a Complaint for Declaratory and Injunctive Relief and Civil Penalties on February 23, 2007, and a First Amended Complaint for Declaratory and Injunctive Relief and Civil Penalties ("First Amended Complaint") on March 15, 2007,

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1 against Defendants alleging violations of the Clean Water Act, 33 U.S.C. §1251 et seq.  
2 related to discharges of stormwater and/or pollutants from the Properties, seeking declaratory  
3 and injunctive relief, civil penalties, and attorney fees and costs; and

4 WHEREAS, Defendants deny Plaintiff's claims and any liability for the alleged  
5 violations; and

6 WHEREAS, counsel for the parties to this action have engaged in discussions  
7 relating to the potential settlement of this litigation, which discussions have included an  
8 assessment of the facts surrounding the alleged violations; and

9 WHEREAS, Defendants have undertaken and are implementing measures to comply  
10 with the Clean Water Act at the Properties; and

11 WHEREAS, Plaintiff and Defendants agree that settlement of these matters is in the  
12 best interest of the parties and the public, and that entry of this Consent Decree (the  
13 "Decree") without additional litigation is the most appropriate means of resolving these  
14 actions; and

15 WHEREAS, Plaintiff and Defendants, by their authorized counsel and without trial or  
16 final adjudication of the issues of fact or law, with respect to Plaintiff's claims or allegations,  
17 consent to entry of this decree to avoid the risks of litigation and to resolve the controversy  
18 between them.

19 NOW THEREFORE, without trial of any issue of fact or law, and without admission  
20 by Defendants of the facts or violations alleged in the First Amended Complaint, and upon  
21 consent of the parties, and upon consideration of the mutual promises contained in this  
22 decree, it is hereby

23 ORDERED, ADJUDGED AND DECREED as follows:

24 1. This Court has jurisdiction over the parties and subject matter of the action;  
25  
26

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1           2.     Each undersigned representative for the parties certifies that he or she is fully  
2 authorized by the party represented to enter into the terms and conditions of this Decree and  
3 to legally bind the parties.

4           3.     This Decree shall apply to and be binding upon the parties and upon the  
5 parties' successors or assigns, provided, however, that this Decree shall not be binding on  
6 any person who purchases all or a portion of the Properties from the Individual Defendants.

7           4.     This Decree constitutes a full and complete settlement of the claims alleged in  
8 the First Amended Complaint in this case and all other claims, known and unknown, that  
9 relate to the Properties and could be asserted under the Clean Water Act pursuant to the  
10 Notice Letter and up through and until entry of this Consent Decree. Plaintiff reserves its  
11 rights with respect to all violations of the Clean Water Act occurring at or related to the  
12 Properties after the date of entry of this Consent Decree.

13          5.     This Decree shall not constitute evidence in any proceeding, an admission or  
14 adjudication with respect to any allegation of the First Amended Complaint, any fact or  
15 conclusion of law with respect to any matter alleged in or arising from the First Amended  
16 Complaint, or the admissions or evidence of any wrongdoing or misconduct on the part of  
17 the Defendants or their successors.

18          6.     In full and complete satisfaction of the claims covered by the First Amended  
19 Complaint filed in this case and all other claims covered by this Decree, as described in  
20 Paragraph 4, Defendants agree to abide by and be jointly and severally subject to the  
21 following terms and conditions:

22           a.     Defendants shall obtain a National Pollutant Discharge Elimination  
23 System ("NPDES") permit from Washington Department of Ecology ("Ecology") for  
24 discharge of stormwater from the Properties. The permit shall cover all of the real  
25 property described in Exhibit A.  
26

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1           b. Defendants shall comply fully with all terms and conditions of the  
2 NPDES permit once they obtain permit coverage from Ecology.

3           c. Defendants' activities at the Properties shall comply with the Clean  
4 Water Act.

5           d. Defendants have initiated the process of obtaining permit coverage  
6 from Ecology by filing a Notice of Intent ("NOI") for coverage under the general  
7 stormwater permit for construction activities. Defendants shall not withdraw the NOI  
8 for any reason. Defendants agree that any revised NOI shall include the Properties  
9 and construction activities contemplated in the existing NOI. Defendants shall  
10 transfer the NPDES permit to individuals who purchase the Properties or portions of  
11 the Properties from the Defendants at the time of sale, or at the time the permit is  
12 issued by Ecology if the permit is not issued prior to such sale.

13           e. Defendants will implement and comply with the Stormwater Pollution  
14 Prevention Plan ("SWPPP") for the "Wapiti Way Private Road", most recently  
15 revised in June 2007 in response to comments from Ecology.

16           f. Within sixty days of the entry of this Consent Decree, Defendants  
17 shall make a payment of \$50,000 to the Wild Fish Conservancy (formerly  
18 Washington Trout) for a road decommissioning project. Plaintiff selected road  
19 decommissioning as a project that would enhance fish habitat by reducing road  
20 density and the associated sedimentation and impacts to water quality and aquatic  
21 habitat in the Lewis River Watershed. The road to be decommissioned shall be  
22 selected by the Wild Fish Conservancy, provided, however, that the decommissioning  
23 area shall not affect access to the Properties. The payment to Wild Fish Conservancy  
24 shall be made by check payable and mailed to P.O. Box 402; Duvall, Washington;  
25 98019.  
26

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1           g.     Within five days of the entry of this Consent Decree, Defendants shall  
 2     pay Plaintiff's reasonable attorney fees and costs in the amount of \$30,000 by check  
 3     payable and mailed to Plaintiff's counsel as set forth in Paragraph 13 of this Consent  
 4     Decree in full and complete satisfaction of Plaintiff's claim for attorneys fees and  
 5     costs under the Clean Water Act.

6           7.     Plaintiff agrees that it will not interfere with Defendants' efforts to obtain the  
 7     permit described in paragraph 6(a). Defendants acknowledge that Plaintiff has submitted  
 8     comments to Ecology regarding the NOI, and this paragraph is not intended to preclude  
 9     GPTF from taking steps to ensure that any permit issued by Ecology complies with  
 10    applicable state and federal laws and regulations.

11          8.     The Court shall retain jurisdiction over this matter and allow this case to be  
 12    reopened without an additional filing fee for the purpose of enabling the parties to this  
 13    Decree to apply to the Court for any further Order that may be necessary to construe, carry  
 14    out, enforce compliance or resolve any dispute regarding the terms or conditions of this  
 15    Decree. In the event Plaintiff believes Defendants are not in compliance with this Decree,  
 16    Plaintiff shall provide written notice to Defendants describing the asserted noncompliance.  
 17    Defendants shall thereafter have 30 days to respond in writing describing any corrective  
 18    action that has or will be taken or contesting the asserted violation. If after Defendants'  
 19    response the parties remain in dispute regarding implementation of or compliance with this  
 20    Decree, the parties shall first attempt to informally resolve the dispute through meetings  
 21    between the parties, which shall take place within 14 days after Defendants' written  
 22    response. If no resolution is reached through informal meetings, the parties may resolve the  
 23    dispute by filing motions with the Court.

24          9.     The parties recognize that no consent judgment can be entered in a Clean  
 25    Water Act suit in which the United States is not a party prior to 45 days following the receipt  
 26    of a copy of the proposed consent judgment by the U.S. Attorney General and the

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1 Administrator of the U.S. EPA pursuant to 33 U.S.C. §1365(c)(3). Upon signing of this  
2 Consent Decree by the parties, Plaintiff shall serve copies of it upon the Administrator of the  
3 U.S. EPA and the U.S. Attorney General.

4 10. This Consent Decree shall take effect on the date it is entered by the Court.  
5 This Consent Decree shall terminate upon completion of all obligations under it, or in the  
6 event the Individual Defendants sell all Real Property that is the subject of this suit.

7 11. This Consent Decree may be modified only upon the written consent of the  
8 parties and the approval of the Court.

9 12. If for any reason the Court should decline to approve this Decree in the form  
10 presented, this Decree and the settlement contained within shall be voidable at the sole  
11 discretion of either party. The parties agree to continue negotiations in good faith in an  
12 attempt to cure any objection raised by the Court to entry of this Decree.

13 13. Notifications or copies required by this Decree shall be made to:

14 For Plaintiff:

15 Christopher Winter  
16 Crag Law Center  
917 SW Oak St., Suite 417  
Portland, OR 97205

17 For Defendants:

18 Jerry Sauer  
26300 NE 16<sup>th</sup> St.  
19 Camas, WA 98607

20 14. The parties agree that any initial press release distributed within the first 14  
21 days following filing of this Consent Decree with the Court, disclosing or discussing the  
22 nature of this Consent Decree or the settlement contained within, shall be made jointly after  
23 each party has the opportunity to review and comment on any such press release.

24 \\\

25 \\\

26 \\\

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1 Dated and entered this 9<sup>th</sup> day of November, 2007.

2  
3 By: 

RONALD B. LEIGHTON  
U.S. DISTRICT JUDGE

4  
5 GIFFORD PINCHOT TASK FORCE

6 Signature:  Executive Director

7 Title: Executive Director

8 Date: 8-23-07

9  
10 MARBLE CREEK, LLC

11 Signature:  member

12 Title: member

13 Date: 8-14-07

14  
15 DAVE CREAGAN

16 Signature:  member

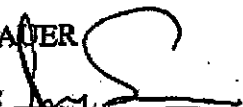
17 Date: 8-14-07

18  
19 BRAD THOMAS

20 Signature:  member

21 Date: 8-14-07

22  
23 JERRY SAUER

24 Signature:  Member

25 Date: 8/10/2007

26  
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